Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

October Term 1995

OKLAHOMA ASSOCIATION FOR
EQUITABLE TAXATION,

Petitioner,

v.

THE CITY OF OKLAHOMA
CITY, OKLAHOMA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR WRIT OF CERTIORARI

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67 pp

QUESTIONS PRESENTED

1. Whether a municipal ordinance which both: (a) levies a one percent (1%) sales tax on all taxable sales occurring in the municipality; and (b) authorizes a rebate of the sales tax to all municipal residents over the age of sixty-five (65) who actually paid the tax (regardless of such residents' need, wealth or income) violates the Equal Protection Clause of the 14th Amendment to the United States Constitution?

2. Whether a heightened level of scrutiny such as "substantially related to an important government interest," as opposed to "rationally related to a legitimate governmental interest," is the proper standard of review for determining the constitutionality of a solely age-based tax rebate scheme when such differential treatment: (a) reflects outmoded notions of the relative capabilities of senior citizens that bear no relation to such citizens' ability to contribute to society; and (b) flies in the face of state and federal public policy as reflected by statutory prohibitions on solely age-based discrimination?

3. Whether a municipal sales tax ordinance which both: (a) must be approved by a vote of the electorate; and (b) exempts certain voters from the onus of the tax; dilutes the voting strength of taxpayers who are against the passage of the sales tax in a manner which is violative of the Equal Protection Clause of the 14th Amendment to the United States Constitution?

LIST OF PARTIES

Petitioner, the Oklahoma Association for Equitable Taxation ("OAET"), was the Plaintiff, for itself and all other resident sales tax taxpayers of The City of Oklahoma City, Oklahoma, similarly situated, in the District Court of Oklahoma County, State of Oklahoma, and Appellant before the Supreme Court of the State of Oklahoma. OAET is a corporation organized under the laws of the State of Oklahoma. OAET has no parent or subsidiary corporations.

Respondent, The City of Oklahoma City, Oklahoma ("City"), was the Defendant in the District Court of Oklahoma County, State of Oklahoma, and Appellee before the Supreme Court of the State of Oklahoma. The City is a municipal corporation organized under the laws of the State of Oklahoma.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

This Petition for a Writ of Certiorari seeks this Court's review of the judgment of the Supreme Court of the State of Oklahoma on a nationally important matter relating to the constitutional limitations on the power of the states to exempt certain residents from taxation applicable to other residents solely on the basis of age.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Oklahoma, dated June 20, 1995, is reported as Oklahoma Association for Equitable Taxation v. The City of Oklahoma City, Oklahoma, 901 P.2d 800 (Okla. 1995) (Simms, J., dissenting), and is reproduced at pages A-1 to A-22 of Appendix A ("App. A"). The unreported decision of the District Court of Oklahoma County, Oklahoma, is reproduced at pages A-23 to A-27 of App. A.

JURISDICTION

The decision of the Supreme Court of the State of Oklahoma was filed on June 20, 1995. The Petitioner's timely Petition for Rehearing was summarily denied without a hearing on September 14, 1995 (App. A, at page A-28). The jurisdiction of this Court to review the decision of the Supreme Court of the State of Oklahoma is invoked by the Petitioner pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. United States Constitution, Amendment XIV, Section 1: Citizenship; Due Process; Equal Protection.

   " All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Municipal Ordinance No. 20,045 of The City of Oklahoma City, Oklahoma. The full text of Ordinance No. 20,045 is set forth at Appendix B.

STATEMENT OF THE CASE

This case arises out of an ambitious long range plan by The City of Oklahoma City, Oklahoma ("City") to revitalize various civic, cultural and entertainment facilities located primarily in the City's downtown business district. On October 13, 1993, the Council of the City passed Ordinance No. 20,045 ("Ordinance"). The Ordinance amended the City sales tax code by levying an additional limited term (i.e., five (5) years) excise tax ("Sales Tax") of one percent (1%) on the gross proceeds or gross receipts derived from all taxable sales occurring within the City.

The effective provisions of the Ordinance were approved by the City's electorate at a special election on December 14, 1993; and the Sales Tax levy authorized by the Ordinance went into effect on January 1, 1994. The Sales Tax expires at the end of calendar year 1998. Approximately Two Hundred Fifty Million Dollars ($250,000,000.00) in Sales Tax revenue will be collected during the five (5) year limited term.

The Ordinance earmarked the revenue to be received from the Sales Tax levy for certain enumerated projects, including: (1) a metropolitan learning center (i.e., public library); (2) a AAA baseball park; (3) improvements to the Myriad Convention Center, the Civic Center Music Hall and the Oklahoma City Fairground; (4) construction of a San Antonio type canal system and related trails, docks and recreation areas; (5) a new indoor sports/convention arena/facility meeting NHL and NBA stan-

dards; (6) a transportation link to the City's downtown from outlying areas; and (7) infrastructure relating to all the foregoing (collectively, the "MAPS Projects").

In addition to the foregoing, the Ordinance also provided that one of the "main projects" for which proceeds of the Sales Tax levy were to be expended was: "The payment of senior citizen tax refunds authorized by Subsection 52-20.3(F) below and administrative costs related thereto." (App. B, at page B-4.)

Section 52-20.3(F) of the Ordinance authorized annual rebates of the Sales Tax levied and collected pursuant to the Ordinance to any resident of the City who: (1) actually paid the Sales Tax; and (2) was over the age of sixty-five (65) at all times during the calendar year in which the Sales Tax was paid. The rebate was equal to the amount of Sales Tax actually paid, with a cap of Thirty-Two Dollars ($32.00) per rebate recipient per year.

All City residents over the age of sixty-five (65) were and continue to be eligible for the annual rebate, regardless of wealth, need or income. Concomitantly, all City residents under the age of sixty-five (65) were and continue to be ineligible for the annual rebate notwithstanding their need or lack of wealth or income.

Subsequent to the enactment of the Ordinance and the levying of the Sales Tax, a number of resident Sales Tax taxpayers of the City banded together and formed the taxpayer protest group known as the Oklahoma Association for Equitable Taxation, the

Petitioner herein, for the purpose of challenging the legality of the rebate portion of the Ordinance.

On February 14, 1995, prior to the first disbursement of rebates, the Petitioner filed an action in the District Court for Oklahoma County, Oklahoma, wherein it sought a declaratory judgment and permanent injunction prohibiting the payment of rebates pursuant to the Ordinance. Relying on undisputed facts, Petitioner moved for summary judgment. The City responded with a counter-motion for summary judgment, wherein the equal protection issue was raised for the first time. Petitioner's response to the City's cross-motion further amplified the equal protection argument.

On March 20, 1995, the trial court, without rendering any oral or written opinion, entered a Minute Order denying the Petitioner's motion and granting the City's cross-motion. The trial court's decision was memorialized in a Journal Entry of Judgment prepared by the City and filed of record on March 22, 1995. The Journal Entry made no specific conclusions of law with respect to the constitutional equal protection argument advanced by the Petitioner; but rather simply granted final judgment in favor of the City on "all claims, all issues and all parties." (App. A at page A-26.)

On March 23, 1995, the Petitioner filed its Petition in Error, along with a Motion for Temporary Injunction pending appeal, with the Oklahoma Supreme Court. The Oklahoma Supreme Court retained jurisdiction, denied the Petitioner's request for a temporary injunction and ordered that the appeal

proceed on an expedited basis. Both parties were granted leave to file supplementary briefs. The final supplemental brief was field on April 12, 1995.

On June 20, 1995, the Oklahoma Supreme Court issued its opinion upholding the Ordinance's rebate scheme against Petitioner's equal protection challenge. Although the Court's opinion recognized that "the City may not have articulated a basis for the distinction based on age with clarity" (App. A at page A-16), it nonetheless upheld (without discussion of or citation to any basis in the record) the City's classification of its citizens based on age for purposes of the rebate because such a classification:

> "is rationally related to the legitimate interest of providing senior citizens whose income may be lower than younger taxpayers with tax relief." (App. A at page A-18-19).

Petitioner thereafter filed a timely Petition for Rehearing which was denied on September 14, 1995.

Approximately thirty-three thousand (33,000) eligible residents of the City applied for the rebate in 1995; and approximately One Million Dollars ($1,000,000.00) in rebates were paid to such residents during 1995. The rebates authorized by the Ordinance will continue to be paid during the 1996 - 1999 time period. Based on the amount of rebates disbursed during 1995, it would appear likely that approximately Four Million Dollars

($4,000,000.00) will be rebated during the 1996-1999 period.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS IMPORTANT QUESTIONS OF LAW ABOUT THE EXTENT TO WHICH, CONSISTENT WITH THE CONSTITUTION, GOVERNMENT CAN UTILIZE AGE AS THE SOLE BASIS FOR EXEMPTION FROM TAXATION.

The Petitioner submits: (1) that in this case the Supreme Court of the State of Oklahoma has decided constitutional questions of great substance not heretofore determined by this Court; or, in the alternative, (2) that the Oklahoma Supreme Court has decided those questions in a way which is not in accord with applicable decisions of this Court and the Circuits.

1. The Constitutional Questions Herein Have Not Heretofore Been Specifically Determined by this Court.

The underlying assumption of the Sales Tax rebate scheme authorized by the Ordinance which is being questioned here, is that those residents who are eligible for the rebate are more deserving in some respect that is identified solely by their age. In other words, age can be used as a proxy for the need for an exemption from a sales tax burden without regard to variations in individual ability.

The Petitioner contends that a heightened level of scrutiny should be applied to the solely age-based classification at issue here because such classification: (i) is

based on the outmoded and artificial notion that all senior citizens are economically and politically disadvantaged in comparison to the rest of the population; and (ii) contradicts the evolving standard of age equality that has come to be embodied in federal and state legislation as a result of changing cultural, political and social patterns and philosophies.

The basic questions in this case would not seem to have ever come before this Court. Prior cases before this Court which come closest to presenting questions similar to those in this case would seem to be Zobel v. Williams, 457 U.S. 55 (1982), and Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976). The first case involved the underinclusiveness of a statutory benefit based on length of residence and the latter involved a case in which it was determined that old age did not define a discrete and insular group in need of extraordinary protection from the majoritarian political process.

The brief per curiam opinion in Murgia was handed down in the days before this Court explicitly acknowledged the existence and efficacy of heightened scrutiny based upon an immutable characteristic other than those specifically enumerated in the 14th Amendment. See Craig v. Boren, 429 U.S. 190, at 210 (1976) (POWELL, J., concurring). Although Murgia explains why age-based classifications do not trigger strict scrutiny, it says nothing about whether such classifications warrant heightened scrutiny. Nor have subsequent cases before this Court squarely addressed the issue. See Vance v. Bradley, 440 U.S. 93, at 97 (1979); City of

Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, at 440 (1985).

The paramount, if not sole, reason this Court has not been called on more often in the last twenty-five (25) years to decide constitutional issues involving age-based classifications is because most classifications which discriminate solely on the basis of age have been outlawed by state and federal legislation.

For example, Title 25 § 1402 of the Oklahoma Statutes provides as follows:

> "**§ 1402. Discriminatory practice**
>
> It is a discriminatory practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a "place of public accommodation" because of race, color, religion, sex, national origin, age, or handicap." (emphasis supplied). Laws 1968, c. 388, § 402. Laws 1985, c. 165, § 11, eff. Nov. 1, 1985.

Similarly, §§ 1302 and 1452 of said Title 25 of the Oklahoma Statutes prohibit age discrimination in housing practices and in employment (unless related to a bona fide occupational qualification).

The Age Discrimination in Employment Act of 1967, 27 U.S.C.A. § 621, 623, as amended, is but one example of federal legislation that prohibits the use of age as

a "proxy" for an individual's relevant characteristic. See Hazen Paper Company v. Biggins, 113 S. Ct. 1701, at 1706 (1993); *cf.* the Americans With Disabilities Act of 1990, 42 U.S.C.A. § 12101.

As Justice MARSHALL, with whom Justice BRENNAN and Justice BLACKMAN joined, stated in his opinion, concurring in part and dissenting in part, in City of Cleburne, Texas, 473 U.S. at 466 (1985):

> "Shifting cultural, political and social patterns at times come to make past practices appear inconsistent with fundamental principles upon which American society rests, an inconsistency legally cognizable under the Equal Protection Clause. *It is natural that evolving standards of equality come to be embodied in legislation."* (Emphasis supplied.)

The underlying premise reflected in the above cited state and federal statutes is that age, like sex, race, handicap and other immutable characteristics, generally bears no relation to ability to perform or contribute to or participate in society and that private activities grounded in such consideration are deemed to reflect prejudice and antipathy inimical to the general welfare of the citizenry.

Concomitant with the enactment over the last twenty-five (25) years of legislation reflecting a public policy which eschews age-based classifications, has been the precipitous rise in the wealth and political

influence of the class of individuals generally referred to as "senior citizens." No longer are senior citizens the least well off in society. In fact, by some estimates sixty percent (60%) of the wealth in the United States is held by individuals over the age of sixty-five (65). Using age as a proxy for poverty reflects outmoded notions of the financial ability of senior citizens to contribute to society. Moreover, the thirty-three million (33,000,000) member strong American Association for Retired Persons asserts inordinate political influence over all legislation which in any way threatens equal, if not special, treatment for senior citizens.

Age-based classifications are undoubtedly relevant to certain legislative decisions. However, the use of age alone to classify persons for purposes of creating an unequal tax burden should be subjected to a heightened level of scrutiny similar to that applied to gender classifications.

2. The Decision of the Oklahoma Supreme Court is Not in Accord With Prior Decisions of this Court and the Circuits.

Regardless of the level of scrutiny determined to be appropriate, the Sales Tax rebate scheme cannot withstand Equal Protection challenge because it does not advance any governmental interest, but rather singles out a politically favored class of persons for special tax treatment not afforded to other citizens similarly circumstanced.

To illustrate, a senior citizen and a non-senior citizen both purchase a $1.00

Hershey bar on January 1, 1995, and both pay the one percent (1%) Sales Tax on the purchase. At the end of 1995, the senior citizen applies for and receives a rebate of one percent (1%) Sales Tax paid on his Hershey bar. Both consumers are identically circumstanced with respect to the activity subjected to the tax; yet one receives a rebate and the other does not.

Equal protection is the guarantee that similar people will be dealt with in a similar manner and that people of different circumstances will not be treated as if they were the same. Tussman and tenBroek, The Equal Protection of the Laws, 37 Calif. L. Rev. 341 (1949). "The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike." Pyler v. Doe, 457 U.S. 202, at 216 (1982). Under the Equal Protection Clause a challenged classification must (at a minimum) be rationally related to some legitimate governmental purpose. City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432 (1985).

In the 1980s this Court invalidated a number of legislative classifications under the equal protection rationality test. Two of those cases involved state tax classifications that imposed a discriminatory tax on out-of-state businesses or new residents of the state.

In Metropolitan Life Insurance Co. v. Ward, 470 U.S. 869 (1985), this Court held that a state law which imposed higher taxes on out-of-state insurance companies doing business in the state than that imposed on in-state insurance companies would violate

equal protection if the law related to no state interest other than the illegitimate desire to discriminate against out-of-state competition in order to *favor* local business.

Williams v. Vermont, 472 U.S. 14 (1985), involved a Vermont automobile use tax statute which exempted from payment of the tax residents of the state who purchased an automobile in another state and paid a sales tax to the state in which they made the purchase, but denied this exemption to a person moving into Vermont who was not a resident of Vermont when he made the purchase of the automobile and paid the sales tax to another state. This Court found that the law had no rational relationship to any legitimate purpose because it appeared to serve no purpose except to impose a higher tax on persons who were not residents of the state when they made an automobile purchase.

In both Metropolitan Life Insurance and Williams this Court demanded that the legislature be able to assert some plausible reason for the tax classification at issue other than the desire to discriminate against out-of-state persons or new residents. Even under the rationality test, the legislature is not entitled to pick out a group it disfavors, declare that group to be different, and then impose a special tax burden on the disfavored group.

In Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985), a case in which questions analogous to those at issue here were raised, this Court held that a state law granting property tax exemptions to veterans of the armed services only if they

were resident in the state before May 8, 1976, violated the Equal Protection Clause because it served no purpose other than reserving a tax benefit for *long time residents*.

The Federal Circuits have taken a similar approach to illegitimate favoritism. For example, in Ranschburg v. Toan, 709 F.2d 1207, at 1211 (8th Cir. 1983), the Court of Appeals for the Eighth Circuit held:

> "Although states may have great discretion in the area of social welfare, they do not have unbridled discretion. They must still explain why they chose to favor one group of recipients over another. *Thus, it is untenable to suggest that a state's decision to favor one group of recipients over another by itself qualifies as a legitimate state interest. An intent to discriminate is not a legitimate state interest.*" (Emphasis supplied.)

A more important case for analysis is Zobel v. Williams, 457 U.S. 55 (1982). In that case this Court held that an Alaska state law distributing state money to state residents based on length of past residency in the state was related to *no* legitimate state purpose and violated the Equal Protection Clause. This Court took the position that a state cannot deny benefits to new residents of the state if there is no reason for that denial other than the desire to give preferential treatment to *OLD* residents over new residents. A law that denies benefits to new residents merely to give a

preference to *older* residents will not survive the rationality test because the desire to discriminate is not a legitimate interest and, therefore, such a law would have no rational relationship to a legitimate governmental purpose.

A review of the concurring opinion by Justice BRENNAN, with whom Justice MARSHALL, Justice BLACKMUN, and Justice POWELL joined, in Zobel, 457 U.S. at 69-71, is particularly enlightening:

> "The 18 year-old native resident of a State is as much a citizen as the 55-year-old native resident. But the Alaska plan discriminates . . . against the 18-year-old native resident, in favor of all residents of longer duration. . . . Permissible discrimination between persons must bear a rational relationship to their *relevant* characteristics. While some imprecision is unavoidable in the process of legislative classification, the ideal of equal protection requires attention to individual merit, to individual need. . . .
>
> [D]uration of residence . . . as the basis for a distribution of state largesse does closely track the constitutionally untenable position that the longer one's residence, the worthier one is of the State's favor . . . . *[U]nderlying any scheme of classification on the basis of duration of residence, we shall al-*

> *most invariably find the unstated premise that 'some citizens are more equal than others.'"* (First emphasis original; second emphasis supplied.)

This Court has made it clear that courts should strike down laws under the rationality test when it is clear that there is no purpose for a classification other than denying a benefit (even if it is not a fundamental right) to a group (even a non-suspect classification) when the denial of such benefit can serve no possible purpose other than the desire to discriminate in favor of a group which is favored by the legislature.

Equal protection analysis also requires that the challenged distinction be reasonable in light of the legislation or activity in question - in this case, infrastructure improvement. See Zobel v. Williams, 457 U.S. 55 (1982); *cf.* County Board of Arlington County v. Richards, 434 U.S. 5 (1977) (*per curiam*):

> "The Equal Protection Clause requires only that the distinction drawn by an ordinance like Arlington's rationally promote the regulation's objective." 434 U.S. at 7 (citations omitted).

The rational relationship standard is not met when the classification relied upon by the legislative authority is "so attenuated as to render the distinction arbitrary or irrational." City of Cleburne, 473 U.S. at 446 (citing Zobel v. Williams, 457 U.S. 55, at 61-63; United States Dept. of Agric.

v. Moreno, 413 U.S. 528, at 535 (1973)). As JUSTICE O'CONNOR recently opined in Heller v. Doe, 113 S. Ct. 2637, at 2643 (1993):

> "[E]ven the standard of rationality as we so often have defined it must find some footing in the realities of the subject addressed by the legislation."

Strikingly absent from the Ordinance is any mention of any governmental interest or purpose that would be served, promoted or advanced by the Sales Tax rebate scheme. At the trial level the Respondent was unable to articulate any governmental interest that was advanced by the rebate scheme; arguing instead that the mere classification as senior citizen/non-senior citizen constitutes a legitimate public purpose and that any policy that *favors* senior citizens is therefore legitimate.

The Respondent did not even attempt to advance the argument that the rebate relieves a tax burden on the elderly poor. Such an argument was impossible given that there is no "income limitation" on persons eligible for the rebate. Nor did or could the Respondent prove that the thirty-three thousand (33,000) out of approximately fifty-five thousand (55,000) eligible persons who applied for the rebate in 1995 were not the more affluent of the elderly, rather than the less fortunate.

Nor was the rebate designed to promote some type of activity that is economically beneficial to the state. What important economic development activity does the rebate serve? None. What products that the

elderly spend a greater percentage of their income on (such as medical equipment or prescription drugs) are exempted by the rebate? None. What difference is there in the use of a Hershey chocolate bar by a senior citizen as opposed to all other taxpayers which entitles the senior citizen to a rebate of 1% tax on that chocolate bar? None.

The asserted goal of the Ordinance was to raise money to enhance the City's civic and cultural infrastructure for the benefit of all residents, as well as non-resident users. The Sales Tax rebate scheme (along with the $275,000.00 spent in administering the rebate) reduced the amount of money available for the bricks and mortar of the MAPS Projects; thereby retarding the accomplishment of the asserted goal.

On appeal the Respondent switched theories and argued that the Sales Tax was in reality a "user" fee and that the Ordinance authorized the rebate to senior citizens because they might not use the facilities to be constructed with the Sales Tax proceeds as much as non-senior citizens.

The Oklahoma Supreme Court's opinion did not mention the belated "user" fee theory; instead holding that the Respondent has a legitimate interest in providing tax relief to senior citizens, some of whom may have less income than younger residents. In effect, the Oklahoma Supreme Court held that the Sales Tax should in actuality be viewed as a graduated tax on income.

The strained attempts to make sense out of the age-based rebate classification

demonstrate the arbitrary and irrational nature of the rebate scheme. The Oklahoma Supreme Court's alleged "rational basis" could be used to validate any arbitrary taxing scheme. The holding could be applied in reverse to justify rebates to all non-senior citizens because some non-senior citizens "may" have incomes lower than some senior citizens; or, similarly, to justify rebates to all persons living in a certain area of town, or driving black cars, or having a daughter named Sara.

The opinion of the Oklahoma Supreme Court with respect to the Equal Protection issue failed to explain how the designedly underinclusive and overinclusive classification was rationally related to a legitimate government interest; finding instead that:

> "Ranschburg is distinguishable from the instant cause in two respects. Here, although there are two classes established by the MAPs Refund Provision, all persons meeting the age qualifications are treated the same . . . ." App. A, at page A-16.

Equal Protection analysis requires more than mere recognition that the Respondent did what it intended to do (i.e., created a tax rebate for a favored class of residents). As Justice STEVENS noted while concurring in United States Railroad Retirement Board v. Fritz, 449 U.S. 166, at 179 (1980):

> "If the analysis of legislative purposes requires only a reading of the statutory language in a

> disputed provision, and if any 'conceivable basis' for a discriminatory classification will repel a constitutional attack on the statute, judicial review will constitute a mere tautological recognition of the fact that Congress did what it intended to do."

If the Oklahoma Supreme Court's opinion was intended to hold, by implication, that the goal of the rebate was to reduce the tax burdens on those most adversely impacted by the Sales Tax, then the solely age-based classification's relationship to the goal is to attenuated as to render the distinction arbitrary and irrational. Nothing in the record, or anywhere else for that matter, did or can demonstrate that senior citizens as a class are burdened disproportionately to any other class affected by the Sales Tax; or that they are, in the aggregate, are in desperate need of tax relief to the tune of Thirty-Two Dollars ($32.00) per year.

It is incongruous for the state to, on the one hand, prohibit a private businessman from selling a Hershey bar to a senior citizen at a discount, while, on the other hand, rebating the Sales Tax on that same Hershey bar to the senior citizen. Age has no rational connection to the purchase of the Hershey bar and cannot be used as a "proxy" for the relevant characteristic (i.e., "poverty") that would entitle the purchaser to tax relief. See Hazen Paper Company, 113 S. Ct. at 1706 (1993).

II. THIS CASE PRESENTS AN IMPORTANT QUESTION OF LAW ABOUT THE EXTENT OF CONSTITUTIONAL PROTECTION AGAINST THE PURPOSEFUL DILUTION OF VOTING STRENGTH.

The only interest served by the rebate scheme was the interest of the sponsors of the Ordinance in obtaining its approval by the electorate. The state has no legitimate interest in intentionally diluting the voting strength of opponents to a measure by offering cash incentives likely to cause some voters, who would otherwise vote against the measure, to either vote for passage or not vote against passage of the measure. The right to vote is a fundamental right and any classification which impinges on such right in a material way is subject to the highest level of judicial scrutiny under the Equal Protection Clause. City of Cleburne, Texas, 473 U.S. at 440 (1985).

The right to vote encompasses the right to prevent the purposeful dilution of a particular group's voting strength. If "the state discriminates in favor of some members of the electorate and against others, the equal protection guarantee may have been violated." Duncan v. Poythress, 515 F. Supp. 327, at 337 (1981).

A court generally looks at three (3) factors to determine whether state action is impermissibly discriminatory in violation of the Equal Protection Clause:

> "the character of the classification in question; the individual interests affected in support of the classification; and the governmental interests asserted in

> support of the classification." Dunn v. Blumstein, 405 U.S. 330, at 335 (1972).

The Sales Tax rebate scheme at issue here divided the members of the electorate into two (2) classes: those eligible for a rebate on the basis of their age; and those ineligible for a rebate. The electorate was not provided with the option of voting on the rebate scheme separate and apart from the MAPS Projects, but rather was forced to approve the rebate scheme in order to obtain a new library, or sports arena or other MAPS facility. By the same token, senior citizens could vote for civil and cultural revitalization, while at the same time exempting themselves from the burden of having to pay the Sales Tax that would fund such revitalization.

To survive strict scrutiny, the Court must find that the classification is reasonably necessary to promote a compelling state interest. See, e.g., Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969).

None of: (i) the Respondent in any of its briefs; nor (ii) the trial court in its judgment; nor (iii) the Oklahoma Supreme Court in its opinion; made any attempt to address the Petitioner's contention that the rebate scheme was nothing more than cynical, political pandering to the self-interest of senior citizens in an attempt to defuse the historical "no-tax increase" voting mentality of such group.

As previously discussed, no legitimate, much less compelling, governmental interest is served by the rebate scheme. The intent

to discriminate in favor of a certain group is not a legitimate interest. Likewise, an intent to debase the voting rights of those members of the electorate who were against the Sales Tax is not a legitimate governmental interest. "[T]he state may no more disadvantage any particular group by making it more difficult to enact legislation in its behalf than it may dilute any person's vote . . . ." Hunter v. Erickson, 393 U.S. 389 at 393 (1969).

The rebate scheme created a non-uniform system of taxation by improperly offering an incentive for senior citizens to vote to impose the Sales Tax on everyone else. What voter would not vote for a tax on everyone else, especially if the voter was entitled to enjoy the fruits of the tax proceeds (e.g., the MAPs Projects). The rebate scheme violates the Equal Protection Clause because it is in its essence nothing more than a thinly veiled scheme of vote buying designed to deny the electorate a fair and impartial election on the wisdom or folly of the MAPs Projects themselves.

Black's Law Dictionary defines Bribery at Elections as:

> "The offense committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstained from voting."

The rebate was a valuable inducement offered to influence senior citizens to "vote taxes on others." The rebate scheme was and is anathema to the American democratic process.

CONCLUSION

A sales tax is a privilege tax. In Oklahoma City some citizens are more privileged than others as a result of their exemption from the Sales Tax.

To paraphrase Justice Brennan's concern, expressed in Zobel, 457 U.S. at 71, regarding "length of residence" as a valid basis for discrimination: "But while [longevity of lifespan] has minimal utility as a measure of things that are, in fact, constitutionally relevant, resort to [longevity of lifespan] as a basis for a distribution of state largesse does closely tract the constitutionally untenable position that the [longer one lives] the worthier one is of the states' favor . . . [and] that underlying any scheme of classification on the basis of [longevity of lifespan], we shall almost invariably find the unstated premise that 'some citizens are more equal than others'".

The Writ should be granted.

Respectfully submitted,

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IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION, an Oklahoma corporation, for itself and all other resident sales tax taxpayers of the City of Oklahoma City similarly situated,	)	FOR OFFICIAL PUBLICATION
Appellant,	)	
vs.	)	No. 85,287
THE CITY OF OKLAHOMA CITY, OKLAHOMA; a municipal corporation,	)	
Appellee.	)	

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY

Honorable Carolyn Ricks, Trial Judge

The taxpayer/appellant filed an action for declaratory judgment and permanent injunction challenging a refund provision passed by the City of Oklahoma City (City/appellee). Ordinance No. 20,045 (MAPS Ordinance) was enacted by the City Council and approved by the voters in a city-wide election. The portion of the MAPS Ordinance at issue grants City residents over sixty-five the right to a refund of all or a part of the sales tax paid by

them during a calendar year. The annual refund is limited to $32.00 per person. Agreeing on the facts, the taxpayer and the City filed motions for summary judgment. Finding that the MAPS Ordinance did not violate the tax rate uniformity requirement of 68 O.S. 1991 §2701(A) or the requirement of the Okla. Const. art. 10, §14 that taxes be collected for a public purpose, the trial judge, Honorable Carolyn Ricks, sustained the City's motion. The taxpayer's motion for temporary injunction pending appeal was denied, and the cause was ordered to proceed pursuant to Rule 1.203, Rules of Appellate Procedure in Civil Cases, 12 O.S. Supp. 1993, Ch. 15, App. 1-A. We find that: 1) pursuant to 68 O.S. 1991 §2701(A), a city may create classes of taxpayers for the purpose of the levy and collection of municipal sales taxes; 92) the MAPS Refund Provision, allowing refunds to persons sixty-five and over, does not violate equal protection guarantees afforded by the United States Const. amend. XIV or the Okla. Const. art. 2, §7.

AFFIRMED

Robert P. Legg For Appellant.
A. Daniel Woska
Oklahoma City, Oklahoma

Kenneth D. Jordan For Appellee.
MaryLu T. Gordan
Assistant Municipal Counselors
City of Oklahoma City
Oklahoma City, Oklahoma

KAUGER V.C.J.:
Two challenges[1] are presented by the accel

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[1]The taxpayer does not argue that the MAPS Ordinance is not a tax levied for a public purpose. Instead, the taxpayer originally asserted that the MAPS Refund Provision violated the public purpose requirement of the Okla. Const. art. 10, §14 for the expenditure of tax dollars. However, this argument was waived in the taxpayer's response to the City's motion for summary judgment and response to the City's counter motion for summary judgment. The response provides in pertinent part at pp. 23-24:

> ". . . 5. <u>The Constitutional Public Purpose Requirement</u> [The Plaintiff would generally agree with the Defendant's conclusion (R.B., at page 44) that the **Rebate** does not in fact involve an 'expenditure' of public monies...." (Emphasis in original.)

The Okla. Const. art. 10, §14 provides in pertinent part:

> "Taxes shall be levied and collected by general laws, and for public purposes only, except that taxes may be levied when necessary to carry into effect Section thirty-one of the Bill of Rights...."

erated cause:[2] 1) whether the MAPS Refund Provision[3] violates the unifor

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We note that in In re Initiative Petition No. 315, 649 P.2d 545, 549 (Okla. 1982) (Petition relating to para-mutual horse racing.), this Court found that inasmuch as only one third of the total proceeds of a tax on pari mutual tickets were intended to be paid to the State general revenue fund and the other two-thirds were to be retained by the licensee, the two-thirds was not a "tax" within the meaning of art. 10, §14. We do not determine here whether the portion of the tax collected and refunded under the MAPS Ordinance is a "tax" within the meaning of art. 10, §14.

[2]Rule 1.203, Rules of Appellate Procedure in Civil Cases, 12 O.S. Supp. 1993, Ch. 15, App. 1-A.

[3]Oklahoma City Ordinance No. 20,045, §52-20.3(F) (10/14/93) provides in pertinent part:

> ". . . (F) Refunds of the additional limited-term excise tax levied under Subsection 52-20.3(A) above are hereby authorized in accordance with the following provisions:
>
> (1) A person who is a resident of The City of Oklahoma City, who actually paid the additional limited-term excise tax of one percent 91%) levied under Subsection 52-20.3(A) above, and who was a senior citizen at all times during the calendar year in which the tax was paid, may file a

mity requirement of 68 O.S. 1991 §2701(A);[4]

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claim with The City for a refund of tax payments made during the applicable calendar year. Only one refund claim shall be filed or allowed per person per calendar year. The amount of any refund allowed hereunder shall not exceed Thirty-Two Dollars ($32.00) per person per calendar year. . . .

(3) No person shall be entitled to a refund based on a claim filed under Subsection 52-20.3(F)(1) above unless there shall be attached to and made a part of such claim a statement, signed under the penalty of perjury, on a form approved by Council and provided by the Director, containing appropriate certifications to verify said claim. . . .

(7) The following words, terms, and phrases when used in this Subsection 52-20.3(F) shall have the meanings ascribed to them below:

. . . (c) 'Senior citizen' shall mean a person sixty-five (65) years of age or older...."

[4]Title 68 O.S. 1991 _2701(A) provides in pertinent part:

"A. Any incorporated city or town in this state is hereby authorized to assess, levy, and collect taxes for general and special purposes of municipal government as the

and 2) whether the Refund Provision conforms with equal protection provisions.[5] We find that the MAPS Refund Provision is consistent with statutory law and with state and federal equal protection guarantees.

UNDISPUTED FACTS

On October 13, 1993, the appellee's, City of Oklahoma City, Oklahoma (City), City Council passed Ordinance No. 20,045 (MAPS

> Legislature may levy and collect for purposes of state government except ad valorem property taxes. Provided, taxes shall be uniform upon the same class subjects, and any tax, charge, or fee levied upon or measured by income or receipts from the sale of products or services shall be uniform upon all classes of taxpayers . . ."

[5]The United States Const., amend. XIV provides in pertinent part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

The Okla. Const. art. 2, §7 provides:

> "No person shall be deprived of life, liberty, or property, without due process of law."

Ordinance) which was approved by the voters in a city-wide special election. The MAPS Ordinance amended the City tax code by levying an additional one percent (1%) excise tax on the gross proceeds or gross receipts derived from all taxable sales. The additional levy is earmarked for certain City improvement projects. Section 52-20.3(F)[6] of the MAPS Ordinance is a refund provision (MAPS Refund Provision) granting Oklahoma City residents over sixty-five the right to a refund of all or a part of the sales tax paid by them during a calendar year. The annual refund is limited to $32.00 per person.

The taxpayer/appellant filed an action for declaratory judgment and permanent injunction on February 14, 1995, challenging the MAPS Refund Provision. Relying on undisputed facts, the taxpayer filed a motion for summary judgment. The City responded with a counter-motion seeking the same relief. The trial court found that the MAPS Ordinance did not violate the tax rate uniformity requirement of 68 O.S. 1991 §2701(A)[7] or the requirement of the Okla. Const. art. 10, §14[8] that taxes be collected for a public

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[6]Oklahoma City Ordinance No. 20,045, §52-20.3(F) (10/14/93), see note 3, supra.

[7]Title 68 O.S. 1991 §2701(A), see note 4, supra.

[8]Okla. Const. art. 10, §14 provides:

"Taxes should be levied and collected by general laws, and for public purposes only, except that taxes may

purpose. On March 23, 1995, the taxpayer filed a motion for temporary injunction pending appeal. After an adversary hearing before the referee, we denied the requested relief and ordered the cause to proceed pursuant to Rule 1.203, Rules of Appellate Procedure in Civil Cases, 12 O.S. Supp. 1993, Ch. 15, App. 1-A. The taxpayer and the City were granted permission to file supplementary briefs. The final brief was filed on April 12, 1995.

I.

PURSUANT TO TITLE 68 O.S. 1991 §2701(A), A CITY MAY CREATE CLASSES OF TAXPAYERS FOR THE PURPOSE OF THE LEVY AND COLLECTION OF MUNICIPAL SALES TAXES.

The taxpayer argues that the MAPS Refund Provision violates 68 O.S. 1991 §2701(A)[9] which provides that taxes received from sales shall be uniform upon all classes of taxpayers. This assertion is based on the premise that by allowing taxpayers over

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> be levied when necessary to carry into effect Section thirty-one of the Bill of Rights. Except as required by the Enabling Act, the State shall not assume the debt of any county, municipal corporation, or political subdivision of the State, unless such debt shall have been contracted to defend itself in time of war, to repel invasion, or to suppress insurrection."

[9]Title 68 O.S. 1991 §2701(A), see note 4, supra.

sixty-five to apply for a maximum refund of $32.00, this class is being taxed at a rate different from younger taxpayers. The City asserts that the Legislature intended in §2701(A) to allow municipalities to classify taxpayers for sales tax purposes and to assess a uniform tax within each class of taxpayers established by the taxing ordinance. We agree.

The determination of legislative intent controls statutory interpretation.[10] The intent is ascertained from the whole act based on its general purpose and objective.[11] In construing statutes, relevant provisions must be considered together whenever possible to give full force and effect to each.[12] To ascertain intent, we look to the language of the pertinent statute.[13] We presume that the Legislature

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[10]McSorley v. Hertz Corp., 885 P.2d 1343, 1346 (Okla. 1994); Smicklas v. Spitz, 846 P.2d 362, 366 (Okla. 1992); Clifton v. Clifton, 801 P.2d 693, 696 (Okla. 1990).

[11]McSorley v. Hertz Corp., see note 10, supra; Oglesby v. Liberty Mut. Ins. Co., 832 P.2d 834, 839 (Okla. 1992); Smicklas v. Spitz, see note 10 at 366, supra.

[12]Haney v. State, 850 P.2d 1087, 1089 (Okla. 1993); Public Serv. Co. of Oklahoma v. State ex rel. Corp. Comm'n., 842 P.2d 750, 752 (Okla. 1992).

[13]McSorley v. Hertz Corp., see note 10, supra; Tate v. Browning-Ferris, Inc.,

intends what it expresses.[14] Except when a contrary intention plainly appears, terms are given their plain and ordinary meaning.[15]

Title 68 O.S. 1991 §2701(A) provides in pertinent part:

> "A. Any incorporated city or town in this state is hereby authorized to assess, levy, and collect taxes for general and special purposes of municipal government as the Legislature may levy and collect for purposes of state government except ad valorem property taxes. Provided, taxes shall be uniform upon the same class subjects, and any tax, charge or fee levied upon or measured by income or receipts from the sale of products or services shall be uniform upon all classes

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833 P.2d 1218, 1228, 21 A.L.R.5th 831, 847-48 (Okla. 1992); State v. ex rel. Macy v. Freeman, 814 P.2d 147, 153 (Okla. 1991).

[14]Oglesby v. Liberty Mut. Ins. Co., see note 11, supra; Fuller v. Odom, 741 P.2d 449, 453 (Okla. 1987); Darnell v. Chrysler Corp., 687 P.2d 132, 134 (Okla. 1984).

[15]Anson Corp. v. Hill, 841 P.2d 583, 585 (Okla. 1992); Tate v. Browning-Ferris, Inc., see note 13, supra; Oglesby v. Liberty Mut. Ins. Co., see note 11 at 840, supra.

of taxpayers. . ."

At issue here is the portion of the statute providing that "taxes shall be uniform upon the same class subjects, and any tax, charge, or fee levied upon or measured by income or receipts from the sale of products or services shall be uniform upon all classes of taxpayers." The taxpayer and the City agree that the first portion of this phrase indicates that a municipality may create different classes of taxpayers. However, the taxpayer insists that the second phrase requires sales taxes to be uniformly imposed upon all taxpayers while the City argues that sales taxes need only be uniform upon each individual class of taxpayer.

The first sentence of §2701(A)[16] clearly provides that a municipality may levy and collect taxes, with the exception of ad valorem property taxes, **in the same manner as the Legislature assesses, levies and collects taxes for general and special purposes.** The Legislature has created classes of taxpayers for purposes of state income tax[17] and for exemptions from state

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[16]Title 68 O.S. §2701(A), see note 4, supra.

[17]See, 68 O.S. Supp. 1992 §2355 (Heading of statute provides: "Tax imposed--Classes of taxpayers." The statute provides the methods for computing taxes based on income.)

sales tax.[18] In some instances, this is accomplished in a procedure similar to the one a qualified person must follow under the MAPS Refund Provisions[19]---a party in the taxpayer class is assessed the tax and must apply for a refund.[20]

Construing the statute in the taxpayer's favor would require us to ignore language indicating that a municipality may levy and collect taxes in the same manner as the Legislature. It would also necessitate that we not acknowledge the Legislature's

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[18]See, 68 O.S. Supp. 1991 §§1357.2 and 1357.3 (Sales tax refunds for tourism facilities.); 68 O.S. Supp. 1993 §§1357.4 and 1357.5 (Aircraft maintenance--sales of computers, data processing equipment, etc., sales tax refund.); 68 O.S. §1357.7 (Exemptions for the sale of horses.); 68 O.S. Supp. 1993 §§1358 & 1358.1 (Sales tax exemptions for agriculture.); 68 O.S. Supp. 1992 §§1359 and 1359.1 (Sales tax exemptions for agriculture.); 68 O.S. Supp. 1993 §§1360 (Sales tax exemptions for corporations and partnerships.). See also, 68 O.S. 1991 §5010 et seq. (Sales Tax Relief Act).

[19]Oklahoma City Ordinance No. 20,045, §52-20.3(F) (10/14/93), see note 3, supra.

[20]See, 68 O.S. 1991 §1357.3(E) (Refunds for tourism facilities.); 68 O.S. Supp. 1993 §1357.4(D) (Refunds affecting aircraft maintenance--Sales of computers, data processing equipment, etc.); 68 O.S. Supp. 1993 §1359.1(D) (Sales tax refunds for manufacturers.).

use of the term "classes" within the statute. The second sentence of §2701(A) specifically provides that taxes shall be uniform upon the same class and that income and sales taxes shall be uniform upon all classes. The taxpayer asserts that the use of "all classes" in reference to the uniformity of income and sales taxes must be read to require identical tax responsibilities for all taxpayers. Although §2701(A) may be unartfully drawn, we will not presume the Legislature did not intend to refer to taxpayers as a class when it used that term rather than one referring to individual taxpayers.[21]

It is unnecessary to apply rules of construction to discern Legislative intent if the will is clearly expressed.[22] However, if an ambiguity exists, a statute will be given a reasonable construction---one that will avoid absurd consequences while preserving legislative intent.[23] Further, we will not presume that the Legislature

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[21]See, Oglesby v. Liberty Mut. Ins. Co., note 11, supra; Fuller v. Odom, note 14, supra; Darnell v. Chrysler Corp., note 14, supra.

[22]Smicklas v. Spitz, see note 10, supra; Fuller v. Odom, see note 14, at 452, supra; Matter of Phillips Petroleum Co., 652 P.2d 283, 285 (Okla. 1982).

[23]TRW/REDA Pump v. Brewington, 829 P.2d 15, 20 (Okla. 1992); Berry v. Public Empl. Retirement Sys., 768 P.2d 898, 900-901 (Okla. 1989); Grand River Dam Auth. v. State, 645 P.2d 1011, 1019 (Okla. 1982).

acted in vain in promulgating a statute.[24] The language of §2701(A) demonstrates a legislative intent to allow municipalities to create classes of taxpayers. We find that pursuant to 68 O.S. 1991 §2701(A), a city may create classes of taxpayers for the purpose of the levy and collection of a municipal sales taxes.

II.

THE MAPS REFUND PROVISION, ALLOWING REFUNDS TO PERSONS SIXTY-FIVE AND OVER, DOES NOT VIOLATE EQUAL PROTECTION GUARANTEES AFFORDED BY THE UNITED STATES CONST. AMEND. XIV OR THE OKLA. CONST. ART. 2, §7.

The taxpayer asserts that the MAPS Refund Provision, allowing a potential refund of $32.00 to persons over the age of sixty-five, violates equal protection guarantees of the United States and the Oklahoma Constitutions.[25] He contends that the provision will not withstand an equal protection attack because the agebased classification is suspect, and because no legitimate governmental interest is advanced in its support. The City insists that the tax

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[24] TRW/REDA Pump v. Brewington, see note 23, supra; Farris v. Cannon, 649 P.2d 529, 531 (Okla. 1982); Moral Ins. Co. v. Cooksey, 285 P.2d 223, 227 (Okla. 1955).

[25] The United States Const., amend. XIV, see note 5, supra; Okla. Const. art. 2, §7, see note 5, supra.

refund is rationally related to the amount of use persons over the age of sixty five will enjoy from the MAPS Projects and that there is a legitimate reason for allowing a tax break to persons of retirement age.

The Equal Protection Clause of the fourteenth amendment requires that no state "deny to any person within its jurisdiction the equal protection of the laws."[26] Due process protections encompassed within the Okla. Const. art. 2, §7[27] are coextensive with those of its federal counterpart. The United States Constitution and the Oklahoma Constitution each contain built-in anti-discrimination components which afford protection against unreasonable or unreasoned classifications which serve no important governmental interests.[28] The same equal protection component found in the fourteenth amendment of the United States Constitution is present in the due process clause of art. 2, §7.[29]

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[26]The United States Const. amend. XIV, see note 5, supra.

[27]The Okla. Const. art. 2, §7, see note 5, supra.

[28]DuLaney v. Oklahoma State Dept. of Health, 868 P.2d 676, 685 (Okla. 1993); Fair School Finance Council v. State, 746 P.2d 1135, 1148 (Okla. 1987).

[29]Callaway v. City of Edmond, 791 P.2d 104, 106 (Okla. 1990); Fair School Finance Council v. State, see note 28, supra; McKeever Drilling Co. v. Egbert, 170 Okla. 259, 40 P.2d 32, 35 (1935).

The taxpayer relies on Ranschburg v. Toan, 709 F.2d 1207, 1210 (8th Cir. 1983) for the proposition that the City's failure to state a legitimate reason for its classification renders the MAPS Ordinance unconstitutional. Ranschburg involved a classification of disabled persons for the receipt of benefits based on the public-assistance benefits they had received. The Eighth Circuit Court held that the Director of Social Services had failed to state a legitimate reason for classifying disabled people differently. Ranschburg is distinguishable from the instant cause in two respects. Here, although there are two classes established by the MAPS Refund Provision, all persons meeting the age qualification are treated the same---everyone over sixty five has the opportunity to apply for the $32.00 annual refund.[30] Additionally, although the City may not have articulated a basis for the distinction based on age with clarity, it did argue before the trial court that policies favoring retirement-age senior citizens have been recognized as legitimate and it quoted from Ware v. Idaho State Tax Comm'n., 567 P.2d 423, 426 (Idaho 1977), in which the Idaho court recognized the humanitarian and economic reasons in support of a tax refund limited to senior citizens.[31]

Legislators are given especially broad

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[30]Oklahoma City Ordinance No. 20,045, §52-20.3(F) (10/14/93), see note 3, supra.

[31]Response of Defendant to Plaintiff's motion for summary judgment & counter motion for summary judgment & brief-in-support, see pp. 45-48.

latitude in creating classifications and distinctions in tax statutes.[32] Unless a classification jeopardizes the exercise of a fundamental right or it makes a classification on an inherently suspect characteristic, a classification which rationally furthers a legitimate state interest will withstand an equal protection challenge.[33] Statutes are interpreted to avoid constitutional conflict, and all reasonable doubt is applied in favor of a statute's validity.[34] A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.[35]

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[32] Regan v. Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 76 L.Ed.2d 129 (1983).

[33] Nordlinger v. Hahn, ____ U.S. ____, ____ 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992); Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439-441, 105 S.Ct. 3249, 3254-55, 87 L.Ed.2d 313 (1985); New Orleans v. Kuke, 427 U.S. 297, 303, 96 S.Ct. 2513, 2516-17, 49 L.Ed.2d 511 (1976).

[34] City of Oklahoma City v. Oklahoma Tax Comm'n., 789 P.2d 1287, 1292 (Okla. 1990); Fair School Finance Council v. State, see note 28 at 1150, supra; Price v. Reed, 725 P.2d 1254, 1261 (Okla. 1986).

[35] McGowan v. State of Maryland, 366 U.S. 420,425-26, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393, 399 (1961). See also, Madden v. Commonwealth of Kentucky, 309 U.S. 83, 88, 60 S.Ct. 406, 408, 84 L.Ed. 590, 593 (1940).

In State v. Morgan, 30 Wis.2d 1, 139 N.W.2d 585, 587 (1966), the Wisconsin Supreme Court upheld a statute providing relief for persons sixty-five or over through a system of income tax credits and refunds. On the issue of the age classification, the Wisconsin Court stated:

> ". . . It would appear that the classification requiring special legislative treatment in the granting of relief to persons sixty-five or over is reasonable. The age of sixty-five is commonly accepted and recognized as that at which a large number of persons retire and no longer in full measure are able to support themselves from current earnings. It is an age that is widely accepted as the retirement age . . ."

We agree with the Wisconsin court that, in the realm of taxation, there are reasonable and legitimate reasons for allowing tax relief to those persons over the age of sixty-five.[36] The City's classification of its citizens on the basis of age in the MAPS Refund Provision is rationally related to

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[36]See also, Doran v. Cullterton, 51 Ill.2d 553, 283 N.E. 2d 865, 867-68 (1972) in which the Illinois Supreme Court found that a homestead exemption for persons sixty-five years of age or older was valid, notwithstanding claims of unconstitutionality on grounds that the act created an irrational and unreasonable classification of landowners on the basis of age.

the legitimate interest of providing senior citizens whose income may be lower than younger taxpayers with tax relief. Therefore, we find that the MAPS Refund Provision, allowing refunds to persons sixty-five and over, does not violate equal protection guarantees afforded by the United States Const. amend. XIV or the Okla. Const. art. 2, §7.

CONCLUSION

The taxpayer does not seek to have the MAPS sales tax declaerd illegal or to halt the construction of any of the MAPS projects. The sole challenge presented is to the MAPS Refund Provision. We find that the Legislature intended in 68 O.S. 1991 §2701(A)[37] to allow municipalities to create classes of taxpayers for the purpose of the levy and collection of municipal sales taxes. We also hold that here are legitimate governmental reasons for upholding the age-based classification and that the MAPS Refund Provision, allowing refunds to persons sixty-five and over, does not violate equal protection guarantees afforded by the United States Const. amend. XIV[38] or the Okla. Const. art. 2, §7.[39] However, this finding is based on the Oklahoma Constitution which provides bona fide, separate,

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[37]Title 68 O.S. 1991 §2701(A), see note 4, supra.

[38]The United States Const. amend. XIV, see note 5, supra.

[39]The Okla. Const. art. 2, §7, see note 5, supra.

adequate and independent grounds upon which we rest our holding.[40]

AFFIRMED.

Kauger, V.C.J., Hodges, Lavender, Opala, Summers, Watt, JJ. concur.
Hararave, J. concurs in result.
Wilson, C.J., Simms, J. dissent.

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[40]Michigan v. Long, 463 U.S. 1032, 1042, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201, 1214 (1983).

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION, an Oklahoma corporation, for itself and all other resident sales tax taxpayers of the City of Oklahoma City similarly situated,	)	FOR OFFICIAL PUBLICATION
Appellant,	)	
vs.	)	No. 85,287
THE CITY OF OKLAHOMA CITY OKLAHOMA; a municipal corporation,	)	
Appellee.	)	

SIMMS, J., DISSENTING:

I must respectfully dissent. The fundamental structure of the MAPS refund provision is flawed because it is not based on a tax exemption or tax credit. I have not found any authority which supports a tax refund standing alone, and the majority cites none. Every statutory scheme for a refund of this nature is founded on an explicit exemption from payment of the tax.

As the majority points out, the legislature has created certain classes of taxpayers who are entitled by statute to receive a refund of sales tax paid based on statutory exemptions, but the majority does not perceive the significance of this difference. Title 68 O.S. 1991 _ _ 1357.2 -

1357.5 provide for sales tax refunds for specified sales relating to qualified aircraft maintenance or repair facilities and tourism facilities and also for certain sale of computers and data processing equipment. Those refunds, however, are based on the statutory exemption provided by 68 O.S. 1991 § 1357 and were implemented by the legislature "in order to administer the exemption for [those] sales." Sections 1357.2 - 1357.5. In the ordinance before us there is no exemption which is administered or effectuated by the refund.

It is fundamental that property is never exempt from taxation except by specific and definite provisions of the law and that the legistlature cannot grant an exemption from taxation except as provided by the constitution. Wenner v. Mothersead, 129 Okl. 273, 264 P. 816 (1928); Independent School Dist. No. 9 v. Glass, 639 P.2d 1233 (Okl. 1982). Also, exemptions are never implied; statutes exempting property from taxation are to be strictly construed against granting exemptions. Autumn House v. State, ex rel., Tax Commission, 814 P.2d 1036 (Okl. 1991); McDonald's Corp. v. Oklahoma Tax Commission, 563 P.2d 635 (Okl. 1977).

The absence of an underlying exemption is not a mere technicality; it violates basic tenets of taxation law. I am concerned about the Court's approval of this unprecedented refund provision without consideration of these underlying issues.

I am authorized to state that Chief Justice Wilson joins with me in the views expressed herein.

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION, an Oklahoma corporation, for itself and all other resident sales tax taxpayers of the City of Oklahoma City similarly situated,	)	
Appellant,	)	
vs.	)	No. 85,287
THE CITY OF OKLAHOMA CITY, OKLAHOMA; a municipal corporation,	)	
Appellee.	)	

JOURNAL ENTRY OF JUDGMENT

THIS CAUSE came on for hearing on the 20th day of March, 1995, before The Honorable Carolyn R. Ricks, District Judge for the Seventh Judicial District, Oklahoma County, State of Oklahoma, on motions for summary judgment filed by both the Plaintiff, Oklahoma Association for Equitable Taxation, an Oklahoma corporation, for itself and all other resident sales taxpayers of The City of Oklahoma City, similarly situated, and the Defendant, The City of Oklahoma City, a municipal corporation, pursuant to Rule 13 of the Rules for the District Courts of Oklahoma.

The Plaintiff appeared in this cause and was represented by and through its

attorneys-of-record, A. Daniel Woska, Esq., and Conner L. Helms, Esq., for the firm of Woska, Hasbrook, Dowd, Underwood & Helms, a professional corporation, and by Robert P. Legg, Esq. The Plaintiff's "Motion for Summary Judgment" against the Defendant was filed herein on February 14, 1995, and served on the Defendant on February 17, 1995.

The Defendant appeared in this cause and was represented by and through its attorneys-of-record, Diane Lewis, Municipal Counselor, Kenneth D. Jordan, Assistant Municipal Counsel, and MaryLu T. Gordon, Assistant Municipal Counselor. The Defendant's "Counter-Motion for Summary Judgment" against the Plaintiff was filed herein on March 6, 1995, and served on the Plaintiff on the same date.

The Court, having read the respective motions for summary judgment filed by the parties, the affidavits and exhibits attached to said motions for summary judgment, and the briefs filed in support thereof, has determined:

1. That this cause is an action for a declaratory judgment and permanent injunction filed by the Plaintiff against the Defendant;

2. That there is, as agreed to by the parties in their respective motions for summary judgment, no genuine controversy as to any material fact needed to decide this cause;

3. That summary judgment is proper in this cause;

4. That the Court should deny the Plaintiff's "Motion for Summary Judgment" filed on February 14, 1995, as to all claims and issues raised therein and deny the declaratory judgment and permanent injunction requested by Plaintiff; and

5. That the Defendant is entitled to summary judgment in its favor as a matter of law and that the Court should grant the Defendant's "Counter-Motion for Summary Judgment" filed on March 6, 1995, as to all claims and issues raised therein and grant declaratory judgment in its favor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this cause is an action for a declaratory judgment and permanent injunction filed by the Plaintiff against the Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that there is, as agreed to by the parties in their respective motions for summary judgment, no genuine controversy as to any material fact needed to decide this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court denies Plaintiff's "Motion for Summary Judgment" filed on February 14, 1995, as to all claims and issues raised therein and denies the declaratory judgment and permanent injunction requested by Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Defendant is entitled to summary judgment as a matter of law and that the Court grants the Defendant's "Counter-Motion for Summary Judgment"

filed on March 6, 1995, as to all claims and issues raised therein and grants declaratory judgment in favor of the Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court hereby enters the following specific conclusions of law, to wit:

1. That Section 52-20.3(F) of Ordinance No. 20,045 of The City of Oklahoma City (with said Section 52-20.3(F) now being codified as Section 52-23(f) of the Oklahoma City Municipal Code, 1993) does not violate the tax rate uniformity requirement of 68 Okla. Stat. 1991, § 2701(A)(first proviso); and

2. That Section 52-20.3(F) of Ordinance No. 20,045 of The City of Oklahoma City (with said Section 52-20.3(F) now being codified as Section 52-23(f) of the Oklahoma City Municipal Code, 1993) does not violate the "public purpose" requirement in the Oklahoma Constitution for expenditure of tax dollars.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with the foregoing, the Court hereby grants final judgment in favor of the Defendant, The City of Oklahoma City, a municipal corporation, as to all claims, all issues and all parties.

DATED this 22nd day of March, 1995.

[SIGNED]
HONORABLE CAROLYN R. RICKS, DISTRICT JUDGE

APPROVED AS TO FORM:

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IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

Thursday, September 14, 1995

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

85-287 Oklahoma Association for Equitable Taxation, an Oklahoma corporation, for itself and all other resident sales taxpayers of The City of Oklahoma City similarly situated v. The City of Oklahoma City, Oklahoma, a municipal corporation.
Rehearing denied.
CONCUR: Kauger, V.C.J., Hodges, Lavender, Hargrave, Opala, Summers, Watt, JJ.
DISSENT: Wilson, C.J. Simms, J.

(Published in The Journal Record October 14, 1993)

ORDINANCE N. 20,045

AN ORDINANCE AMENDING THE "CITY SALES TAX CODE", ARTICLE II OF CHAPTER 52 OF THE OKLAHOMA CITY MUNICIPAL CODE, 1980, BY THE ADOPTION OF A SECTION 52-20.3; LEVYING AN ADDITIONAL LIMITED-TERM EXCISE TAX OF ONE PERCENT (1%) UPON CERTAIN GROSS PROCEEDS OR GROSS RECEIPTS; SPECIFYING THAT THE ADDITIONAL LIMITED-TERM EXCISE TAX MAY BE EXPENDED ONLY FOR CERTAIN LIMITED PURPOSES ("MAIN PROJECTS" AND "SUPPLEMENTAL PROJECTS"); ESTABLISHING A LIMITED-PURPOSE TAX FUND TO BE KNOWN AS THE "OKLAHOMA CITY METROPOLITAN PROJECTS TAX FUND"; PROVIDING FOR THE ADMINISTRATION OF SAID TAX FUND; PROVIDING FOR A CITIZENS OVERSIGHT BOARD TO REVIEW AND MAKE RECOMMENDATIONS REGARDING EXPENDITURES OF TAX MONIES; PROVIDING FOR SENIOR CITIZENS TAX REFUNDS; PROVIDING THAT WORDS AND TERMS SHALL BE GIVEN THEIR PLAIN, ORDINARY, AND CUSTOMARY MEANING EXCEPT AS SPECIFICALLY DEFINED; PROVIDING A LIMITED TERM OF FIVE (5) YEARS FOR SAID ADDITIONAL EXCISE TAX LEVY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE FOR SECTIONS 1 AND 2 OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OKLAHOMA CITY:

SECTION 1. That the "City Sales Tax Code, Article II of Chapter 52 of the Oklahoma City Municipal Code, 1980, is hereby

amended by the adoption of a Section 52-20.3 to read as follows:

Sec. 52-203. Additional limited-term excise tax levied upon gross proceeds or gross receipts; specifying that the additional limited-term excise tax may be expended only for certain limited purposes ("main projects" and Supplemental projects"); establishing 8 limited-purpose tax fund; providing for the administration of said tax fund; providing for a citizens oversight board; providing for senior citizens tax refunds; providing that words and terms shall be given their plain, ordinary, and customary meaning except as specifically defined; providing a limited term of five (5) years for said additional excise tax levy.

(A) In addition to, and cumulative of, the excise tax of two (2) percent levied by Section 52-20 of this Chapter upon the gross proceeds or gross receipts derived from all sales taxable under the sales tax laws of this State, the excise tax of three-quarters (3/4) percent levied by Section 52-20.1 of this Chapter upon the gross proceeds or gross receipts derived from all sales taxable under the sales tax laws of this State, and the excise tax of one-eighth (1/8) percent levied by Section 52-20.2 of this Chapter upon the gross proceeds or gross receipts derived from all sales taxable under the sales tax laws of this State, a limited-term excise tax in the additional amount of one percent (1%) is hereby levied upon the gross proceeds or gross receipts derived from all sales taxable under the sales tax laws of this State, including but not limited to the specific taxable sales and service transactions enumerated in

Paragraphs (1) through (11), inclusive, of Subsection (a) of Section 52-20 of this Chapter. The limited-term of the additional excise tax levied pursuant to this Subsection 52-20.3(A) is specified in Subsection 52203(H) below.

(B) The additional limited-term excise tax levied pursuant to Subsection 52-20.3(A) above may be expended only for the following limited purposes (the "main projects"):

MAIN PROJECTS

(1) Improvements related to the North Canadian River (which may include without limitation the construction or installation of darns, the construction of a canal, and/or the construction, installation, or provision of public amenities such as landscaping, trails, docks, picnic areas, recreation areas, parking facilities, and/or lighting);

(2) A metropolitan learning center (to include but not be limited to a main library facility);

(3) A baseball pare meeting not less than "AAA" professional baseball standards;

(4) The improvement of the Myriad Convention Center and/or related facilities;

(5) The improvement of the Civic Center Music Hall and/or related facilities;

(6) The improvement of the Oklahoma City Fairgrounds and/or related facilities;

(7) An indoor sports/convention facility meeting not less than National Hockey League (NHL) or National Basketball Association (NBA) standards;

(8) All or part of a transportation system and/or related facilities to provide access between Interstate Highway 40 and Meridian Avenue and downtown Oklahoma City; provided, said system and/or facilities shall be funded only if a Federal grant covering not less than 50% of applicable costs is obtained;

(9) Site acquisition, site preparation, site improvements, infrastructure, parking facilities, personal property, engineering fees, architectural fees, and/or legal fees related to one or more of the main projects listed above in Subsections 52-20.3(B)(1) through (B)(8), inclusive;

(10) The payment of principal and interest on and the costs of issuance of notes or other short term obligations in support of one or more of the main projects listed above in Subsections 52-20.3(B)(1) through (B)(9), inclusive, issued by a public trust of which The City of Oklahoma City is the sole beneficiary; and/or

(11) The payment of senior citizens tax refunds authorized by Subsection 52-20.3(F) below and administrative costs related thereto.

The main projects listed above in Subsections 52-20.3(B)(1) through (B)(10),

inclusive, may be commenced, continued, completed, and/or concluded, in whole or in part, as and in the order deemed appropriate by Council.

(C) Upon conclusion of the main projects listed above in Subsections 5220.3(B)(1) through (B)(10), inclusive, the additional limited-term excise tax levied pursuant to Subsection 52-20.3(A) above may be expended for the following supplemental limited purposes (the "supplemental projects"):

SUPPLEMENTAL PROJECTS

(1) Additional improvements to the Oklahoma City Fairgrounds and/or related facilities not funded under the main project listed above in Subsection 52-20.3(B)(6);

(2) All or part of a transportation system and/or related facilities to provide access between downtown Oklahoma City and the vicinity of Remington Park; provided, said system and/or facilities shall be funded only if a Federal grant covering not less than fifty percent (50%) of applicable costs is obtained;

(3) Art, natural history, history, cultural, or educational museums and/or facilities;

(4) Site acquisition, site preparation, site improvements, infrastructure, parking facilities, personal property, engineering fees, architectural fees, and/or legal fees related to one or more of the supplemental projects

listed above in Subsections 52-20.3(C)(1) through (C)(3), inclusive;

(5) The payment of operating costs, maintenance costs, and/or capital replacement costs related to one or more of the main or supplemental projects listed above in Subsections 52-20.3(B)(1) through (B)(9), inclusive, or Subsections 52-20.3(C)(1) through (C)(4), inclusive, as applicable; and/or

(6) The payment of principal and interest on and the costs of issuance of notes or other short term obligations in support of one or more of the supplemental projects listed above in Subsections 52-203(C)(1) through (C)(5), inclusive, issued by a public trust of which The City of Oklahoma City is the sole beneficiary.

The supplemental projects listed above in Subsections S2-20.3(C)(1) through (C)(6), inclusive, may be commenced, continued, completed, and/or concluded, in whole or in part, as and in the order deemed appropriate by Council

As used in this Subsection 52-203(C), the phrase "conclusion of the main projects" shall mean the final funding of the main projects in the amount(s) determined by Council.

(D) There is hereby established a limited-purpose tax fund to be known as the Oklahoma City Metropolitan Projects Tax Fund" into which all revenues collected pursuant to Subsection 52-20.3(A) above shall be

deposited. Monies in said limited-purpose tax fund shall be accumulated from year-to-year. Said fund shall be placed in an insured interest-bearing account and the interest which accrues on the fund shall be retained in the fund. Said limited-purpose tax fund shall be non-fiscal and shall not be considered in computing any levy when The City makes its estimate to the excise board for needed appropriations. Monies in said limited-purpose tax fund shall be expended only as accumulated and only for the limited-purposes ("main projects" or "supplemental projects") described in Subsections 52-20.3(B) or 52-203(C), as applicable.

(E) Prior to expenditure of any monies in the Oklahoma City Metropolitan Projects Tax Fund, Council shall establish or designate a citizens oversight board to review expenditures of such monies and submit recommendations to Council regarding such expenditures.

(F) Refunds of the additional limited-term excise tax levied under Subsection 52-20.3(A) above are hereby authorized in accordance with the following provisions:

(1) A person who is a resident of The City of Oklahoma City, who actually paid the additional limited-term excise tax of one percent (1%) levied under Subsection 52-20.3(A) above, and who was a senior citizen at all times during the calendar year in which the tax was paid, may file a claim with The City for a refund of tax payments made during the applicable calendar year. Only one refund claim shall be

filed or allowed per person per calendar year. The amount of any refund allowed hereunder shall not exceed Thirty-Two Dollars ($32.00) per person per calendar year.

(2) Claims for refunds of taxes paid during a calendar year shall be filed with the Finance Director on claim forms provided by the Director and shall be filed no earlier than January 1st of the succeeding calendar year and no later than March 1st of said succeeding calendar year. Failure to file a claim on or before March 1st of the succeeding calendar year shall constitute a forfeiture of a person's right to receive a refund for taxes paid during the preceding calendar year Only one claim may be filed per person per calendar year.

(3) No person shall be entitled to a refund based on a claim filed under Subsection 52-20.3(F)(1) above unless there shall be attached to and made a part of such claim a statement, signed under the penalty of perjury, on a form approved by Council and provided by the Director, containing appropriate certifications to verify said claim.

(4) (a) The Director shall review all claims received by him and shall examine the statements attached thereto as to the claimant's eligibility to receive a refund; and may request such further information and documentation, including without limiting the generality thereof any

documents listed below, as needed to verify the claimant's eligibility. Any documents submitted shall be confidential, handled so as to protect the privileged nature of the same, and returned to claimant after the Director has reviewed the same. The documents referred to above are:

(i) Acceptable proof of residence, which may include without limitation a driver's license or voter identification card;

(ii) Acceptable proof of age, which may include without limitation a driver's license or Medicare identification card; and/or

(iii) Any other information deemed necessary by the Director.

(b) If a person shall otherwise be eligible for a refired under other provisions hereof, the Director may recommend payment of the claim if he is satisfied that the claimant has not wilfully made any false statement in the claim for the purpose of obtaining a refund and if the claimant cooperated with the Director's request for information and documentation under Subsection .52-20.3(F)(4)(a) above.

(c) The Director shall submit each claim to the Council together with his recommendation for approval or disapproval of the same. If the Director's recommendation shall be that a claim be disapproved, the

Director shall accompany his recommendation to the Council with a concise statement of reasons for such recommendation.

(5) If the Council shall determine, in its discretion, that the claimant is eligible for a refund of taxes paid under the provisions of this Subsection 52-20.3(F), it shall approve the claim for refund, but without interest, subject to the limitations as to amount contained in Subsection 52-20.3(F)(1) above.

(6) A person who shall wilfully make a false statement in any claim for a refund or who signs a false or fraudulent claim for the purpose of defrauding the City shall be guilty of an offense against The City and may be declared to be ineligible to receive refunds of taxes levied under Subsection 52-20.3(A) above for such period of time as the Council, in its discretion, may deem appropriate.

(7) The following words, terms, and phrases when used in this Subsection 52-20.3(F) shall have the meanings ascribed to them below:

(a) Calendar year" shall mean the twelve (12) month period commencing on January 1st of any year and ending on December 31st of the same year;

(b) "Director" shall mean the Director of Finance of The City of Oklahoma City; and

(c) "Senior citizen" shall mean a person sixty-five (65) years of age or older.

(8) In addition to all other powers granted to the Director under this Chapter, he is hereby authorized and empowered:

(a) To make, adopt and amend rules and regulations appropriate to the carrying out this Subsection 52-20.3(F);

(b) To delegate his functions under this Subsection 52-20.3(F) to an assistant or other employee or employees of The City; and

(c) To prescribe methods for determining the eligibility for a refund under this Subsection 52-20.3(F)

(G) Except as specifically defined in this Article, the words and terms used in this Section 52-20.3 shall have and be given their plain, ordinary arid customary meaning.

(H) The additional excise tax levied pursuant to Subsection 52-20.3(A) above shall be for a limited term of five (5) years beginning at 12:00 a.m. on January 1, 1994, and ending at 12:00 a.m. on January 1, 1999.

SECTION 2. CODIFICATION. The provisions of Section 1 of this Ordinance shall be codified as Section 52-20.3 of Article II of Chapter 52 of the Oklahoma City Municipal Code, 1980.

SECTION 3. EFFECTIVE DATE OF SECTIONS I AND 2 ABOVE. The provisions of Sections 1 and 2 of this Ordinance shall become effective upon approval of said Ordinance by a majority vote of the registered voters of The City of Oklahoma City voting on such question at the special election to be held for such purpose on the 14th day of December, 1993.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, word, or any other portion of this Ordinance is, for any reason, held invalid or unconstitutional such section, subsection, sentence, clause, phrase, word, or other portion shall be deemed a separate, distinct and independent provision, and such holding of invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance.

SECTION 5. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health, safety and public good of The City of Oklahoma City and the inhabitants thereof that the provisions of this Ordinance be put into full force and effects an emergency is hereby declared to exist by reason whereof this Ordinance shall take effect and be in full force and effect from and after its passage, as provided by law.

INTRODUCED AND CONSIDERED in open meeting of the Council of The City of Oklahoma City on the 13th day of October, 1993.

PASSED by the Council of The City of Oklahoma City on the 13th day of October, 1993.

SIGNED by the Major of the City of Oklahoma City on the 13th day of October, 1993.

[SIGNED]
MAYOR

ATTEST:

[SIGNED]
CITY CLERK

APPROVED as to form and legality this 13th day of October, 1993.

[SIGNED]
Assistant Municipal Counselor

Supreme Court, U.S.
FILED
NOV 10 1995
CLERK

No. 95-605

In The

Supreme Court of the United States

October Term, 1995

OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION,

Petitioner,

v.

THE CITY OF OKLAHOMA CITY, OKLAHOMA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Oklahoma

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court below was correct in rejecting Petitioner's assertion that the age-based classification is suspect and subject to heightened scrutiny under the Equal Protection Clause.

2. Whether the Court below was correct in deciding the MAPS Refund Provision is rationally related to a legitimate governmental purpose.

3. Whether the age-based classification in this case is a denial of equal protection as vote dilution.

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STATEMENT OF THE CASE

This case is about a single provision of the MAPS Ordinance proposed by the Oklahoma City Council on October 13, 1993, and approved by the voters in a city-wide special election on December 14, 1993. The MAPS Ordinance amended the Oklahoma City tax code by levying an additional one percent excise tax for five years on all taxable sales made within Oklahoma City. The funds raised by the five-year tax are to be placed in a special account and used on a pay-as-you-go basis to erect new facilities and renovate existing public buildings in downtown Oklahoma City.

The section of the MAPS Ordinance at issue is the MAPS Refund Provision. It grants to Oklahoma City residents, who are sixty-five years and older, the right to an annual refund of all or part of the MAPS one percent sales tax actually paid by them, up to $32 per person. (Opinion below, Petition App. A-6 and A-7; now published at *Oklahoma Association for Equitable Taxation v. The City of Oklahoma City*, 901 P.2d 800, 802 (1995)).

Petitioner's Statement of the Case, with some clarification, accurately reflects the proceedings below. (Petition 3 through 6.) Accordingly, Respondent adopts Petitioner's statement as to the course of the proceedings and disposition of the case below, and adopts the remaining Statement of the Case with the following exceptions:

1. Petitioner's substitution of the pejorative term "rebate" for "refund" throughout its Petition is an invention of the Petitioner. "Rebate" was neither used in Ordinance No. 20,045, which established the MAPS Refund Provision (Petition App. B), nor was "rebate" used in the

Supreme Court of the State of Oklahoma's opinion. *See Oklahoma Association for Equitable Taxation v. The City of Oklahoma City*, 901 P.2d 800 (Okla. 1995).

2. In its argument, Petitioner states:

> "No longer are senior citizens the least well off in society. In fact, by some estimates sixty percent (60%) of the wealth in the United States is held by individuals over the age of sixty-five (65)."

That statement, characterized as a fact, was neither raised in the proceedings below nor is it relevant. It is purposefully misleading to the Court. In fact, in Oklahoma City, according to the 1990 United States Census, the median income for households headed by householders age sixty-five and over was $7,888, whereas the median income for households headed by householders under sixty-five years old was $27,958. (Median income calculated from 1990 United States Census data for household income by age of householders.)

REASONS WHY THE WRIT SHOULD BE DENIED

The Oklahoma Supreme Court's decision is consistent with decisions of other state courts, United States courts of appeals, and with decisions of this Court.

ARGUMENT

Petitioner asks this Court to hear this case for three reasons. First, it contends that a heightened level of scrutiny should be applied to the MAPS Refund Provision. Second, Petitioner contends that the Oklahoma Supreme Court's decision is not in accord with prior decisions of this Court and the United States courts of appeals because no legitimate governmental interest is served by the MAPS refund program. Third, Petitioner claims that this case involves "purposeful dilution of a particular group's voting strength," (petition 21).

I. IT IS WELL SETTLED THAT THE REASONABLE BASIS TEST IS THE APPROPRIATE LEVEL OF SCRUTINY TO BE APPLIED TO AN AGE-BASED CLASSIFICATION UNDER THE EQUAL PROTECTION CLAUSE.

The question here is whether the decision of the citizens of Oklahoma City to vote for an additional one cent sales tax for five years, which includes a limited refund of paid sales taxes to citizens sixty-five years old or older, violates the Equal Protection Clause. Petitioner claims that age-based classification should be subject to strict or heightened scrutiny because times have changed, and implies that the Court has not addressed this issue in the last twenty-five years.

That implication is not true; age-based classification was an issue in *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992) and in *Gregory v. Ashcroft*, 501 U.S. 452 (1991). In *Gregory*, the constitutional question raised was whether Missouri's constitutional provision requiring

appointed judges (other than municipal judges) to retire at the age of seventy years violated the Equal Protection Clause. The petitioners in *Gregory* claimed that the mandatory retirement provision created irrational distinctions between seventy-year-old judges and younger judges. The Court in *Gregory* stated:

> "Petitioners are correct to assert their challenge at the level of rational basis. This Court has said repeatedly that age is not a suspect classification under the equal protection clause. Nor do petitioners claim that they have a fundamental interest in serving as judges. The State need therefore assert only a rational basis for its age classification."

Id. at 470 (citations omitted).

The Court has consistently declined to extend heightened review to differential treatment based on age. The Court's rationale has been that the aged have not experienced a " 'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities," as have people discriminated against because of race, alienage, or national origin. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313 (1976).

In *Gregory*, as in this case, the challenged age-based classification is not merely the act of the legislature, but "reflects both the considered judgment of the . . . legislature that proposed it and that of the citizens . . . who voted for it." *Gregory, supra* at 441.

The Court concluded:

> "[W]e will not overturn such a [law] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [people's] actions were irrational."

Gregory, supra at 471, *quoting Vance v. Bradley*, 440 U.S. 93, 97 (1979).

II. THE MAPS REFUND PROVISION IS RATIONALLY RELATED TO A LEGITIMATE GOVERNMENTAL PURPOSE.

The MAPS Ordinance is a matter of strictly local concern. The MAPS Refund Provision of that ordinance reflects both the considered judgment of the Oklahoma City Council who proposed it and that of the residents of Oklahoma City who voted in favor of it. The MAPS Refund Provision neither burdens a suspect group nor a fundamental interest. "[C]ourts are quite reluctant to overturn governmental action on the ground that it denies equal protection of the laws." *Gregory, supra* at 471.

A. Petitioner Failed to Meet Its Burden To Show The MAPS Refund Provision Is Not Rationally Related To Any Legitimate Governmental Purpose.

Petitioner asserts that Respondent City has failed to prove that the age-based classification in the MAPS Refund Provision is reasonably related to a legitimate governmental purpose. Petitioner has it backwards:

> "In an equal protection case of this type, however, those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker."

Vance v. Bradley, 440 U.S. 93, 111 (1979) (citations omitted).

As the Oklahoma Supreme Court recognized, Petitioner failed to meet its burden. *See Oklahoma Association for Equitable Taxation v. City of Oklahoma City*, 901 P.2d 800 (Okla. 1995). The Oklahoma Supreme Court concurred with the holdings in other states which acknowledge that state and local taxing policies that favor senior citizens with refunds and exemptions are legitimate humanitarian and economic bases for age-based classification. *See Oklahoma Association for Equitable Taxation v. City of Oklahoma City, supra; Ware v. Idaho State Tax Commission*, 98 Idaho 447, 567 P.2d 423, 426 (1977), *modified on other grounds, Parsons v. Idaho State Tax Com'n*, 716 P.2d 1344, 1347 (Idaho Ct. App. 1986); *State ex rel. v. Morgan*, 30 Wis.2d 1, 139 N.W.2d 585, 587 (1966); and *Doran v. Cullerton*, 51 Ill.2d 553, 283 N.E.2d 865, 867-68 (1972).

B. Legislative Classifications Pertaining To Taxing Statutes Are Given Great Latitude.

As a general rule, legislation is presumed valid and will be sustained if a classification created by statute is rationally related to a legitimate governmental interest, despite the fact that, in practice, legislation may result in some inequality. *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992). "This standard is especially deferential in the

context of classification made in complex tax laws." *Id.*, 112 S.Ct. at 2332. In taxing measures, "[l]egislatures have especially broad latitude in creating classifications and distinctions." *Exxon Corp. v. Eagerton*, 462 U.S. 176, 196 (1983), *on remand, Eagerton v. Exchange Oil and Gas Corp.*, 440 So.2d 1031 (Ala. 1983), *quoting Regan v. Taxation with Representation in Washington*, 461 U.S. 540, 547 (1983). *See also Nordlinger v. Hahn, supra*, 112 S.Ct. at 2332.

The MAPS Refund Provision is part of a taxing policy of the City of Oklahoma City. The limited refund was designed to provide tax relief to City residents who are sixty-five and older. It was not irrational for the City Council to believe that: (1) senior citizens would be less able to pay the MAPS sales tax; and (2) senior citizens would be less likely to use the facilities built by the MAPS tax increase.

> "For purposes of rational-basis review, the 'latitude of discretion is notably wide in . . . the granting of partial or total exemptions upon grounds of policy.' "

Nordlinger v. Hahn, supra, 112 S.Ct. at 2335, *quoting F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920).

The Court has long recognized that state and local governmental taxing policies may be designed to serve more purposes than merely raising revenue. For that reason, courts have shown great deference to legislative taxing policies.

> "The Equal Protection Clause does not forbid classifications. It simply keeps governmental

> decisionmakers from treating differently persons who are in all relevant respects alike."

Nordlinger v. Hahn, supra at 2331 (citation omitted).

> "[I]n structuring internal taxation schemes, 'the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' "

Nordlinger v. Hahn, supra at 2332, *quoting Williams v. Vermont*, 472 U.S. 14, 22 (1985), *appeal after remand, Williams v. State*, 156 Vt. 42, 589 A.2d 840 (1990), *cert. denied, Williams v. Vermont*, 502 U.S. 821 (1991), *cert. denied, Woodard v. Vermont*, 502 U.S. 984 (1991).

C. The MAPS Refund Age-Based Classification Is A Reasonable Means To Promote A Legitimate Legislative Objective.

An age-based classification, approved by the citizens of Oklahoma City, allows senior citizens to receive a limited refund of sales taxes they have paid. Age-based classifications in state tax law were subjected to an equal protection analysis by this Court in the recent case of *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326 (1992). In that case, the people of California, in a statewide vote, approved an acquisition-value taxation scheme that provided an exemption from reassessment for two special classes of new owners, one of which was persons aged 55 and older. This Court held in *Nordlinger* that the exemption rationally furthered legitimate purposes. The Court stated that:

> "The people of California reasonably could have concluded that older persons in general should not be discouraged from exchanging their residences for ones more suitable to their changing family size or incomes."

Id., 112 S.Ct. at 2335.

In *Jefferson v. Hackney*, 406 U.S. 535, 549 (1972), *rehearing denied*, 409 U.S. 898 (1972), Texas allocated a higher proportion of available AFDC funds to the aged. There the Court stated:

> [T]he State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the . . . elderly, especially because the latter have less hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it.

Id. at 549.

This Court has recognized that age-based classification, "like all legal classifications, is founded on a generalization." *Gregory, supra* at 473. Such a generalization may be true, partially true, or not true at all. However, equal protection is not denied "merely because the classifications made . . . are imperfect." *Jefferson v. Hackney, supra* at 546.

The decision of the Oklahoma Supreme Court is consistent with the prior decisions of this Court and the

decisions of federal courts of appeals regarding the application of an equal protection analysis to age-based classification. *See Izquierdo Prieto v. Mercado Rosa*, 894 F.2d 467 (1st Cir. 1990); *Acevedo v. Nassau County, New York*, 500 F.2d 1078 (2d Cir. 1974); *Malmed v. Thornburgh*, 621 F.2d 565 (3d Cir. 1980), *cert. denied*, 449 U.S. 955 (1980); *Thompson v. Walker*, 758 F.2d 1004 (4th Cir. 1985); *Hatten v. Rains*, 854 F.2d 687 (5th Cir. 1988); *Chapman v. City of Detroit*, 808 F.2d 459 (6th Cir. 1986); *Hess v. St. Joseph Police Pension Fund*, 788 F.2d 1344 (8th Cir. 1986); *Shaw v. State of Or. Public Employees' Retirement Bd.*, 887 F.2d 947 (9th Cir. 1989). In each of the foregoing cases, an age-based classification was found to be rationally related to a legitimate governmental purpose.

III. THIS CASE DOES NOT INVOLVE VOTE DILUTION.

> "[A] vote dilution claim alleges that the State has enacted a particular voting scheme as a purposeful device 'to minimize or cancel out the voting potential of racial or ethnic minorities.' *Mobile v. Bolden*, 446 U.S. 55, 66, 100 S.Ct. 1490, 1499, 64 L.Ed.2d 47 (1990)."

Miller v. Johnson, ___ U.S. ___, 115 S.Ct. 2475, 2485 (1995).

Vote dilution has been addressed by this Court on numerous occasions, *e.g. Gray v. Sanders*, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Thornburg v. Gingles*, 478 U.S. 30 (1985). In virtually all these cases, the issue of vote dilution involved either unequal population

apportionment or redistricting schemes that split voting blocs. In each case, the issue was analyzed in terms of political equality requiring "one person, one vote." *Reynolds v. Sims, supra* at 557.

> "The phrase 'vote dilution,' in the legal sense, simply refers to the impermissible discriminatory effect that a multimember or other districting plan has when it operates 'to cancel out or minimize the voting strength of racial groups.' "

Thornburg v. Gingles, supra at 87, (O'Connor, J., concurring in the judgment), *quoting White v. Regester*, 412 U.S. 755, 765 (1973).

The MAPS Ordinance was put to the vote of the people of Oklahoma City in a city-wide election. Petitioner has never alleged, and has no basis to claim, that the vote of a senior citizen counted more than the vote of a non-senior citizen.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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No. 95-605

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

October Term 1995

OKLAHOMA ASSOCIATION FOR
EQUITABLE TAXATION,

Petitioner,

v.

THE CITY OF OKLAHOMA
CITY, OKLAHOMA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF OKLAHOMA

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondent's arguments highlight why the Court should grant the Petition. Respondent concedes:

1. That the Court has never decided whether a tax rebate authorized solely on the basis of age violates the Equal Protection Clause;

2. That evolving standards of equality have come to be embodied in State and Federal legislation prohibiting solely aged-based discrimination;

3. That this Court has not, in light of legislation eschewing age-based discrimination, squarely addressed whether age-based classifications warrant heightened scrutiny[1]; and

4. That this Court has not squarely decided whether a taxing scheme which is subject to approval by the electorate and which exempts certain members of the electorate from taxation, impinges on the right to

---

1 Respondent contends (Opp. 4) that this question has been analytically assessed by the Court in recent cases. However, the quoted language cited by Respondent clearly indicates that the Petitioners therein asserted their challenge "at the level of rational basis" and that this Court merely restated, without analysis, its prior holdings with respect to the level of scrutiny applied to age-based classifications.

vote in a manner violative of the Equal Protection Clause.

The issues presented are ripe for resolution in this case. In fact, as Respondent points out (Opp. 6), the highest Courts of at least three (3) other states (Idaho; Wisconsin; and Illinois) have upheld solely age-based tax classifications favoring senior citizens. Accordingly, as Petitioner has previously argued (Pet. 7), this case presents important questions of law about the extent to which, consistent with the Constitution, government can utilize age as the sole basis for exemption from taxation; which questions should be decided by the Court.

I. The Court Should Grant the Petition to Resolve the Question of Whether The Aged-Based Rebate Scheme Challenged Here Violates the Equal Protection Clause.

A. The Rebate Scheme is Not Rationally Related to a Legitimate Governmental Interest.

With respect to the merits argument set forth in the Respondent's Opposition, the Petitioner would point out to the Court that the Respondent (Opp. 7), like the Oklahoma Supreme Court below, has once again failed to articulate any legitimate governmental interest that is served by the rebate scheme. Rather, the Respondent has simply identified several **potential** differences between **some** senior and **some** non-senior citizens.

Merely identifying potential differences does not constitute the articulation of a legitimate governmental policy. As the Sixth Circuit held in Doe by Doe v. Cowherd, 965 F.2d 109, 112 (1992):

> "It is clear that the mere identification of differences is not enough; equal protection `require[s] that a distinction made have some relevance to the purpose for which the classification is made.' Austin, 848 F.2d at 1394, citing Baxstrom v. Herold, 383 U.S. 107, 111, 86 S. Ct. 760, 762-63, 15 L.Ed 2d 620 (1966)."

To properly articulate a legitimate governmental purpose, the government must start with a neutral premise unburdened by the ultimate classification. In this case that premise would look something like the following:

(a) Certain citizens (not senior citizens) of limited wealth and/or income will be adversely affected by the sales tax increase; and

(b) Such citizens should be relieved, to some extent, of the burden of the sales tax increase; therefore

(c) A tax rebate should be granted to such citizens.

It is difficult to discern the underlying premise on which the Respondent's alleged tax relief policy was grounded because the Respondent never briefed or

argued that policy, either at the trial level (at trial Respondent argued that **any** policy that **favors** senior citizens is legitimate (Pet. 17), or on appeal (on appeal Respondent argued that the sales tax was really a "user fee" (Pet. 18)). The first time the alleged policy appears is in the post-hoc rationalization set forth in the opinion of the Oklahoma Supreme Court.

However, the Oklahoma Supreme Court's articulation of the governmental interest ("providing senior citizens...with tax relief") is nothing more than an unreasoned restatement of the classification it purports to justify.

As observed by the Court of Appeals for the Third Circuit in Delaware River Basin Commission v. Bucks County Water & Sewer Authority, 641 F.2d 1087, 1099-1100 (3d Cir.1981):

> "Various commentators have observed that it is always possible to hypothesize that the purpose underlying a classification is the goal of treating one class differently from another. A statute's classifications will invariably be rationally related to a purpose so defined, since the "purpose" is, in effect, a restatement of the classification. To engage in such hypothesizing, however, would render the rational basis standard no standard at all."

Once a neutral premise for sales tax relief is articulated, then the question becomes how to classify citizens in a way

that will channel the rebate to the citizens that are adversely affected by the sales tax increase.

The Respondent's argument is that age can be used as a proxy for the determination of "adverse impact". In effect, the Respondent, as well as the Oklahoma Supreme Court, is arguing that **all** senior citizens are adversely impacted by the sales tax increase, while **no** non-senior citizens are adversely impacted by the sales tax increase. Such an argument, and the classification based thereon, is patently irrational and arbitrary.

Respondent chides Petitioner for stating that by some estimates, 60% of the wealth in the United States is held by senior citizens (Opp. 2); because that statement "was neither raised in the proceedings below nor is it relevant" (Opp. 2). Respondent then proceeds to cite misleading 1990 Census statistics which it never raised in the proceedings below (Opp. 2). The respondent failed to state whether its statistics on "median income" included unearned or only earned income (retired persons would naturally have less earned income), or income such as social security payments, tax-free income and the like; all or part of which would be excluded from income for Federal income tax purposes.

Furthermore, Respondent fails to explain why (in its unreasoned opinion) wealth is "irrelevant" (Opp. 2) to the case at bar. The fact that Respondent chose to ignore senior citizen wealth when it devised the tax rebate scheme does not make it irrelevant and any statement to the contrary

is nothing more than the Respondent's bald assertion.

A review of the same 1990 Census cited by the Respondent reveals the following, more relevant, statistics for Oklahoma City. Senior citizens account for only 14.7% of the City's population. There are 69,096 persons (15.9% of the total population) with income **less** than the poverty level; but **only** 6,515 persons over the age of sixty-five (13.1% of all persons over 65) have income **less** than the poverty level. In other words, only 9.5% of all persons living under the poverty line are senior citizens.

The Respondent's median income statistics, based solely on households, also failed to take into account the fact that a large proportion of householders under 65 have children. Apparently, Respondent must not believe that having children has an impact on disposable income. When children are considered, per capita income in Oklahoma City drops to $13,528 per person. Additionally, Respondent's statistics fail to take into account that there are more than just two age groups extant in society. What, for example, is the median income for persons aged 18-30, many of whom are students and have no income?

The Petitioner contends that the Respondent has not, nor has the Oklahoma Supreme Court even attempted to, much less adequately, explain why the Respondent chose to deny rebates to those non-senior citizens adversely impacted by the sales tax increase. As the Eighth Circuit state in Ranschburg v. Toan, 709 F.2d 1207, at 1211 (1983):

> "Although states may have great discretion in the area of social welfare, they do not have unbridled discretion. **They must still explain why they chose to favor one group of recipients over another**...Therefore, we cannot accept the state's contention that the challenged classification is rationally based because the legislature chose to provide Utilicare benefits to some totally disabled persons, but not to others, i.e., that it did what it intended to do. To accept this reasoning would, in effect, render the rational basis test a nullity and would `suspend the operation of the Equal Protection Clause in the field of social welfare law.' Hagans v. Lavine, 415 U.S. 528, 539, 94 S.Ct. 1372, 1380, 39 L.Ed.2d 577 (1974)." (Emphasis supplied).

If tax relief for those most adversely affected by the sales tax increase was the public policy underlying the rebate scheme, then the use of an age-based classification which **excludes 90% of those truly in need while including 87% of senior citizens who are not truly in need**, is "so attenuated as to render the distinction arbitrary and irrational." City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 446 (1985).

The Respondent's rebate scheme denies tax relief to over 90% of the citizens of

Oklahoma City living **below** the poverty line (i.e. approximately 62,500 persons), while simultaneously granting tax relief to 87% of senior citizens living **above** the poverty line (i.e. approximately 58,500 persons). Moving the demarcation line to an income level above the poverty line would have some impact on the percentage of senior citizens deemed in real need of tax relief; however, no matter where the true need line is drawn, it is doubtful that the 90% figure would significantly change given that 86% of the population is under the age of 65. In other words, there are approximately six times more citizens under 65 than over 65, and therefore for every additional senior citizen included in the true need category as a result of using a different base line, there will be four, five, six or perhaps more persons under 65 who will also be included in the true need category.

Turning to the "user fee" issue, it is clear that the Respondent's contention that it "was not irrational for the City Council to believe that: ...(2) senior citizens would be less likely to use the facilities built by the MAPS tax increase" (Opp. 7) is nothing more than the **ipse dixit** of the Respondent which not only is unsupported by any legislative fact contained in the record below, but also defies common knowledge and experience.

There is absolutely no known correlation between: (i) the amount of sales tax a person pays; and (ii) the degree to which a person utilizes public services or facilities, and the Respondent made no attempt to establish such a

correlation on the record either at the trial level or on appeal.

The Court has made it clear for at least the last one hundred (100) years that a tax levy is not invalid on the ground that the persons taxed receive no benefit from the expenditure of the money. Wagoner v. Evans, 170 U.S. 588 (1898). Taxpayer lawsuits attempting to avoid the payment of taxes on the theory that the taxpayer received no benefit from the expenditure of the taxes paid have generally been viewed as coming from the extremist political fringe of society and have been summarily dealt with by courts at all levels. The affixation of the Respondent's imprimatur to such views is counterintuitive and demonstrates the lack of a rational basis for the rebate scheme.

If the Respondent wanted to rationally impose the cost of the MAPS facilities on the actual users, then it would have funded the facilities with revenue bonds rather than a general sales tax. Additionally, as indicated above with respect the tax relief canard, the Respondent has failed to explain why it chose to favor one group of **potential** non-users over all other potential groups of non-users such as non-senior citizens who die or move out of town before the facilities are built, or passing tourists or non-individuals such as corporations, or persons who would not use the facilities simply because they have no interest in baseball or hockey or the like.

The user fee artifice is also nothing more than another post-hoc rationalization unsupported by the record.

B. The Rebate Scheme Impinges on the Right to Vote.

The Respondent once again concedes, having never disputed, Petitioner's contention that the rebate scheme was intended to influence senior citizens not to vote against the sales tax increase. The Respondent's attempt to ignore the issue is but a continuation of its four line non-response at the trial level wherein the Respondent stated that it would "simply disregard" the Petitioner's argument; and its total non-response on appeal to the Oklahoma Supreme Court.

The Respondent attempts to cabin the protection afforded by the Equal Protection Clause by contending (Opp. 10) that the question presented is limited to the concept of "one person, one vote", and therefore the equal protection guarantee was not violated because each senior citizen had only one vote.

As the Seventh Circuit has observed, the "gravamen of equal protection lies not in the fact of deprivation of a right but in the invidious classification of persons aggrieved by the states' actions." Briscoe v. Kasper, 435 F.2d 1046, 1052 (7th Cir. 1970).

The issue presented here is whether the 14th Amendment protects the electorate against actions designed to debase the rights of all voters in an election. In other words, may a governmental entity in essence **stack the deck** in favor of a "yes" vote by offering cash incentives to a

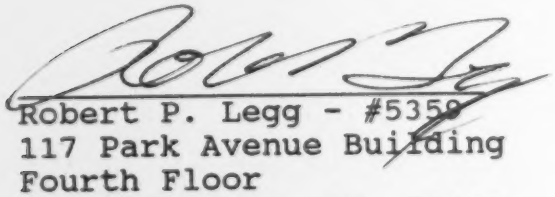
certain portion of the electorate.

The question presented, although phrased in terms of equal protection, is based on Petitioner's argument below which also fairly included the due process protection (non-classification based) of the 14th Amendment.

CONCLUSION

The Writ should be granted.

Respectfully Submitted,



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